



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2005

Mr. Dan Meador
Assistant General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756

OR2005-05281

Dear Mr. Meador:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 226134.

The Texas Department of State Health Services (the "department") received a request for information concerning a complaint filed with the State Board of Social Work Examiners against the requestor. You state that you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a CMS Form 2567 Statement of Deficiencies and Plan of Correction. In Open Records Letter No. 2005-04917 (2005), issued June 6, 2005, we granted the department a previous determination finding, in part, that the identifying information of patients, physicians, other medical practitioners, or other individuals contained in a CMS Form 2567 is confidential when the provider being evaluated has had a reasonable opportunity to review the report and offer comments. *See* 42 U.S.C. § 1306(e), (f); 42 C.F.R. §§ 401.126, .133. The facts and circumstances at issue continue to support the findings set forth in Open Records Letter No. 2005-04917. We therefore determine that the department must withhold the identifying information of patients, physicians, other medical practitioners, or other individuals pursuant to section 552.101 in conjunction with federal law in accordance with the previous determination of this office in Open Records Letter No. 2005-04917. *See also* Open Records Decision No. 673 at 7-8

(2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

Next, we address the department's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Pursuant to section 552.301(e) a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the department received this request on February 10, 1005. However, you did not request a ruling or submit the information at issue until April 7, 2005. Thus, the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your argument concerning this exception.

Section 552.101 of the Government Code protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 505.2545 of the Occupations Code provides in relevant part as follows:

(h) All information and materials subpoenaed *or compiled* by [the Texas State Board of Social Worker Examiners] in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure to anyone other than the board or its employees or agents involved in discipline of the holder of a license or order of recognition, except that this information may be disclosed to:

(1) persons involved with the board in a disciplinary action against the holder of a license or order of recognition;

- (2) professional social work licensing or disciplinary boards in other jurisdictions;
 - (3) peer assistance programs approved by the board under chapter 467, Health and Safety Code;
 - (4) law-enforcement agencies; and
 - (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.
- (i) The filing of formal charges against a holder of a license or order of recognition, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Occ. Code § 505.2545(h), (i) (emphasis added). You inform us that some of the submitted information was compiled by the Texas State Board of Social Worker Examiners (the “board”), which is part of the department’s Professional Licensing and Certification Unit, “in response to a complaint, and an investigation occurred.” You further state that the exceptions outlined in section 505.2545(h) are not applicable and that the information is not required to be released under section 505.2545(i). We therefore conclude that the information we have marked is made confidential in its entirety pursuant to section 505.2545(h) of the Occupations Code. The department therefore must withhold the marked information in its entirety pursuant to section 552.101 of the Government Code.

In summary, the department must withhold the identifying information on the CMS Form 2567 of identifying information of patients, physicians, other medical practitioners, or other individuals pursuant to section 552.101 in conjunction with federal law in accordance with the previous determination of this office in Open Records Letter No. 2005-04917. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 505.2545 of the Occupations Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "L. Joseph James". The signature is written in a cursive, flowing style.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/AEC/sdk

Ref: ID# 226134

Enc. Submitted documents

c: Ms. Traci Session
1003 Redleaf Drive #2803
Arlington, Texas 76017
(w/o enclosures)